S.B. CIVIL REVISION PETITION NO.301/2005

Gopi Krishna. vs. Ramlal and others.

Date : 28.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. KC Samdariya, for the petitioner.

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Reportable

Heard learned counsel for the petitioner.

Brief facts of the case are that original seven plaintiffs were the owners of a property measuring 10 feet x 76 feet 9 inches. Out of this property, a portion measuring 10 feet x 28 feet was let out to the petitioner/defendant. All the seven landlords filed a suit for eviction against the petitioner/defendant.

During the pendency of the suit, the petitioner/defendant purchased 4/7th share in whole of the property (10 feet x 76 feet 9 inches) by sale deed dated 31.10.2002. The defendant submitted an application before the trial court on 30.1.2004 stating therein that since the defendant has purchased 4/7th share in whole of the property and the rented premises is lesser in measurement to the share of the petitioner's purchased property, therefore, he became owner of the property with three plaintiffs who have not sold their share in the property.

According to learned counsel for the petitioner, the

tenancy right merged into ownership right and, therefore, the cause for seeking decree for eviction does not survive after the petitioner's purchase of the property. It is also submitted that if a tenant purchases the property, then the landlord cannot continue with the suit for eviction on the foundation of tenancy and so has been held by the Hon'ble Supreme Court in the case of Shipping Corporation of India Ltd. vs. Machado Brothers & Ors. reported in JT 2004(4) SC 25.

Learned counsel for the petitioner further relies upon the judgment of this Court delivered in the case of Hari Pratap vs. Ram Gopal reported in 1960 RLW 219 wherein this Court, in almost identical circumstances when only fraction of a rented property was purchased by the tenant, held that no decree for eviction can be passed against the tenant for the whole premises when he purchased the fraction/share in the property.

I have considered the submissions of learned counsel for the petitioner.

The facts stated by the learned counsel for the petitioner and referred above clearly reveals that total property is 10 feet x 76 feet 9 inches. Admittedly, all the plaintiffs were owners of the property and the property was not divided between the plaintiffs. Four plaintiffs sold their share in the property and not defined or demarcated

the property as they could not have sold the demarcated property out of a joint ownership.

In view of the above, at the most, the tenant became owner of the property to the extent of share of four plaintiffs and thereby, he stepped in the shoes of the sellers. This character of the ownership is also limited to the extent of share of the sellers only. That position continues for the rented premises also, than the shares of the remaining three plaintiffs who did not sell their share remain as it is for every inch of the rented premises. May it be that the tenant purchased share of the property, the character of the landlord and tenant between four plaintiffs may come to an end but so far as relationship of landlord and tenant between the remaining three plaintiffs and petitioner cannot come to an end simply because four plaintiffs sold their shares. The simple reason is that the theory of merger of tenancy in ownership cannot apply where there is no sale at all. Admittedly, three of the plaintiffs have not sold their share to the defendant tenant, therefore, there is no merger of tenancy rights of tenant in ownership right to the extent of the landlord who has not transfered title in favour of the defendant-tenant. Otherwise also, by the act of co-sharer, right of other co-sharer cannot be defeated. In case, the suit for eviction will be dismissed, in such circumstances, than it may lead to encouraging more disputes in cases where because of death of original landlord, property will devolve upon successors having no good relation between them.

Even this Court in Hari Pratap's case (supra) also held that only correct decree which may be passed in a case of this character (of acquiring title by the tenant of fraction of the rented premises) is for joint possession leaving out the parties to further litigate by a suit for partition if they choose to do so and in the meantime by allowing the decree to the plaintiffs for proportionate rent with respect to their shares in the shop. In above case, even the lower court did so and did not pass the decree for eviction against the tenant and the High Court upheld the decree passed by the court below.

In view of the above judgment of this Court also, the suit of the landlords in the facts of this case cannot be dismissed at this stage. It is for the trial court and the appellate court to decide what decree can be passed in the changed circumstances on proving that the defendant tenant has purchased the part of the rented premises or purchased the share of some of the landlords.

Apart from above, it is not the stage where complicated questions of fact and law can be decided and at this stage, this also cannot be held that what will be the right of the landlords in case, a share in the joint family is sold which includes the rented premises also in the light of the subsequent decisions of the Hon'ble Supreme Court where on the facts of those cases, it was observed that the tenant is bound to deliver the possession of the property to his

landlord till tenancy survives. These all questions can be decided after full trial only and not as a preliminary issue while deciding the application only.

Learned counsel for the petitioner submits that the petitioner tenant has already filed a suit for partition and which is pending and, therefore, the two suits can be consolidated so that appropriate decree can be passed.

For that purpose, it is for the petitioner to take steps by moving appropriate application and that application can be decided by the lower court after hearing the other party only in accordance with law.

In view of the above, I do not find any merit in this revision petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya